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In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-631

GEORGE ALDER,
et al.,

Petitioners,

vs.

JACK SANDSTROM,
Director, Department of Corrections and Rehabilitation,
Dade County, Florida, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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MIAMI REVIEW — 371-4853 — 377-3721

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioners, George Alder, G. A. Alderson, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Arthur M. Bobrick, Glenn Campbell, Jr., Bradford Cochrane, Lester Cole, Chester Culbreath, Pat Dalton, Paul Discoli, O. K. Duke, Jr., J. W. Ewalt, Bill Forrest, James L. Frey, Francis Fulginiti, George L. Fulton, Paul Haenel, Earl Hall, A. L. Hauck, Marc Hill,

C. R. Holzschuher, Dick Jordan, Charles M. Leavy, James E. McKeehan, C. O. Means, Charles B. Medlen, Robert E. Mendheim, Stephan Merlock, E. L. Moses, Al Moskovitz, Robert F. Niemeyer, J. E. O'Donnell, Duane Randle, Ray Randle, H. N. Simmons, Wayne Strong, F. B. Stutz, Jack Wilson, Florida Greyhound Owners & Breeders Association, Inc., a Florida corporation, pray that a writ of certiorari issue to the Supreme Court of Florida and that this Honorable Court review and reverse the judgment of that court against Petitioners and in favor of Respondents, Jack Sandstrom, Director, Department of Corrections and Rehabilitation, Dade County, Florida; the State of Florida, West Flagler Associates, Limited, a Florida limited partnership, Metropolitan Dade County, Florida, Joe LaCroix, Joseph Villella, National Greyhound Association, an unincorporated association, and Robert E. Thomas, member, officer and director of National Greyhound Association,[1] Respondents.

OPINIONS BELOW

The Florida Supreme Court rendered its opinion on July 21, 1975, its opinion denying rehearing on July 29, 1975, its opinion consolidating appeals on July 17, 1975, and its opinion temporarily releasing petitioners on writ of habeas corpus on July 10, 1975. None of these opinions has been published officially. These opinions, together with the orders of the trial and appellate courts, are appended to this petition.

---

[1]Respondents Joe LaCroix, Joseph Villella, National Greyhound Association, and Robert E. Thomas were defendants below and were aligned with present petitioners in the initial trial court proceeding. They are not now represented by undersigned counsel and their position with reference to this petition is not known.

JURISDICTION

Petitioners seek review of a judgment of the Florida Supreme Court rendered July 21, 1975, which became final by denial of rehearing on July 29, 1975. That judgment discharged a writ of habeas corpus which the Florida Supreme Court had issued on July 10, 1975. By virtue of that Court's pre-emption of the jurisdiction of the Court of Appeal, Third District of Florida, over an interlocutory appeal, which was then consolidated with its discharge of the writ of habeas corpus, the Florida Supreme Court also affirmed the trial court's entry of the preliminary mandatory injunction. The writ of certiorari therefore runs to the Florida Supreme Court. Petitioners invoke this Court's jurisdiction under Title 28 United States Code, Section 1257(3). The judgment of the Florida Supreme Court violates petitioners' rights under the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution.

QUESTIONS PRESENTED FOR REVIEW

1. Whether entry of a preliminary mandatory injunction compelling specific performance of personal services contracts deprives petitioners of their Thirteenth Amendment guarantees against involuntary servitude?

2. Whether entry of a preliminary mandatory injunction based upon evidentiary hearings held ex parte after removal to and prior to remand from, the federal district court, deprives petitioners of their Fifth and Fourteenth Amendment rights to due process?

3. Whether petitioners' incarceration for contempt of a state court order rendered without subject matter or in personam jurisdiction deprives petitioners of their Fifth, Thirteenth and Fourteenth Amendment rights to due process and not to be subjected to involuntary servitude?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States

Amendment V:

"No person shall . . . be deprived of life, liberty or property without due process of law. . . ."

Amendment XIII:

"Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States. . . ."

Amendment XIV, Section 1:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law. . . ."

Title 28 United States Code, Section 1446(e):

> "Promptly after the filing of such petition [for removal] and bond the . . . defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

STATEMENT OF THE CASE

Factual background; pari-mutuel greyhound racing in Florida.

West Flagler is a state licensed pari-mutuel wagering track accorded a time-interval, geographical monopoly for greyhound racing. It is the largest of several such tracks in Florida. During its two racing seasons, it is, as it advertises "the only game in town."

Many of petitioners (most especially those 18 who were incarcerated below) are individuals who own or lease, train, care for and maintain registered racing greyhounds. Thirty of petitioners are generally acknowledged to be racing the fastest, most successful greyhounds. Their greyhounds win more races, and therefore more "purses", than the more than one hundred other kennels licensed to race in Florida. Those thirty petitioners were, directly or indirectly, the signers of West Flagler's prepared, printed form "contract" styled "Flagler Kennel Club Booking Application and Contract." None of the terms of such contracts were negotiated, and West Flagler had established the practice of staggering the ending dates of such con-

tracts into three groups of the kennel owners. By regulation, the State of Florida deducts 17.4% of each dollar wagered at a track, extracts 7.4% as a tax, and allots 10% total for the track. No rules or regulations establish the percentage of the 10% which goes to kennel owners, but West Flagler, in virtually identical alignment with all other South Florida operators, has unilaterally imposed a 2% allocation to kennels which win, place or show in various races.

Nearly all of the kennel owners who are petitioners in this cause work personally, full-time in the racing, training and maintaining of greyhounds. Some employ helpers called trainers or handlers. Some are their own trainers and handlers. Many engage their entire family year-round in the kennel operation. As the cost of living and of doing business had been increasing, the kennel owners as a group had found it increasingly difficult to survive financially on the small purses allotted to them by track operators. Through their association (the "FGOBA") and by the appointment of a committee of negotiators, petitioners had dealt directly with two smaller track operators in northern Florida and had obtained by such bargaining substantial increases in the purse structure.

Through their negotiating committee, the 30 kennel owners who raced at West Flagler had been negotiating directly with West Flagler for weeks prior to the July 3, 1975 beginning of West Flagler's summer racing meet.

Simultaneous state and federal suits by West Flagler.

On June 30, 1975, West Flagler sued petitioners and others in the state trial court in Miami and in the District

Court for the Southern District of Florida. The suits arose out of the same occurrences and transactions. But the state action purported to be based upon state antitrust law violations and breach of the West Flagler-created "contracts". Though West Flagler had been negotiating directly with an attorney for petitioners, it obtained upon the filing of the complaint, ex parte and without notice, a temporary injunction. That order, signed before any attempts to serve the complaint were commenced, purported to be findings "from the sworn complaint and evidence" that (a) the trial court had jurisdiction of the subject matter and the parties and notice would have provoked the damage sought to be avoided; (b) the contracts "involve special and unique chattel and product which cannot be readily supplanted or replaced" and West Flagler would have no adequate remedy at law; and ruling that (c) the kennel owners were not to remove their greyhounds from South Florida; (d) the injunction was effective immediately; and (e) delivery of the order upon the attorney who had been negotiating for the kennel owners would ipso facto constitute "good and sufficient service" upon all kennel owners.

Having thus summarily determined that service had been effected, the court scheduled a hearing on a motion for a broader mandatory injunction for 3 o'clock on the afternoon of July 3rd.

Summary, ex parte dispositions in favor of respondents after removal and prior to remand.

At approximately 2 o'clock on the afternoon of July 3rd, petitioners perfected removal of the state court cause to the Federal District Court. All appropriate papers were filed and notices given and counsel notified the trial judge

shortly before 3 o'clock that the case had been removed. The trial judge indicated that counsel should nevertheless appear at the 3 o'clock hearing. Counsel for these petitioners appeared at that hearing, announced in open court that the case had been removed, requested and received permission to depart lest there be a claimed waiver of their removal rights, and departed.

Despite the absolute lack of any jurisdiction to proceed further, respondents offered and the trial court received testimony and evidence on the motion for mandatory injunction. Other counsel for respondents appeared ex parte before the chief judge of the District Court for the Southern District of Florida; they requested an emergency hearing concerning the removal petition. The district judge before whom the case had fallen was absent. Another district judge concluded a trial, came off the bench, reviewed the removal papers for approximately 20 minutes, and "sua sponte" remanded the cause to the Florida state court. That non-appealable order of remand was signed at 5:55 P.M. on July 3rd.

Fifteen minutes later, without notice, without hearing and based upon the testimony and evidence which had been received prior to the remand and outside the presence of counsel for petitioners, the state trial court entered its "Order Granting Temporary Mandatory Injunction". That order made the following recitations:

(a) The court had jurisdiction of the subject matter and the parties and "the equities are with plaintiff and against the defendants."

(b) The individual kennel owners had written contracts to furnish dogs for the July 3, 1975 racing meet; the State of Florida has a financial interest in the conduct of the meet; plaintiff would be irreparably damaged by the kennel owners' non-performance and "the economy of this area is materially affected."

(c) The contracts involve special and unique chattels not replaceable; denial of the mandatory injunction would irreparably damage West Flagler; and "the balance of convenience and public interest" compelled a ruling for West Flagler.

(d) The application for temporary mandatory injunction was granted; the 30 contracting kennel owners were ordered to supply the dogs and "comply" with their contracts.

(e) The 30 kennel owners were required to file their entries by the following morning, July 4th at 10:00 A.M.

(f) Upon the kennel owners' failure to file entries, their dogs (most of which were already located at a facility owned in part by West Flagler) were to be sequestered and a receiver would be appointed to control, enter and race such dogs, his costs and fees to be assessed against the kennel owners.

(g) The kennel owners were given eight days to answer the state court complaint.

(h) The kennel owners were enjoined from removing any greyhound from the West Flagler facility.

Again, ex parte and without hearing or notice to kennel owners, the trial court on July 4th entered its "Amendment to Order Appointing Receiver" as follows:

(a) reciting that the July 3rd order "has not been complied with";

(b) authorizing the receiver to employ personnel to perform the entry and racing duties and to borrow money therefor, such borrowed monies to be a first lien upon the greyhounds;

(c) ordering the kennel owners' employees (none of whom had been named or served in the complaint) to work with the receiver or face contempt citations;

(d) ordering veterinarians (also not named or served) to continue to treat the dogs and have a lien upon the dogs for their services;

(e) ordering police officials "to cooperate with the receiver and to take whatever action is necessary to prevent violence"; and

(f) ordering the receiver to appear before the court on July 7th and report what had happened.

Contempt proceedings; summary incarceration.

On July 5th, the trial court acknowledged the receiver's inability even to keep the dogs healthy, much less race them. It returned custody to the kennel owners.

Despite the fact that the complaint had not been served upon more than a handful of the kennel owners and despite the fact that no hearing on the merits attended by the kennel owners had ever been held, a "contempt notice" was handed to counsel who had removed the case to federal court. That contempt notice set hearing for noon, Monday, July 7th. On that morning, the petitioners who had been served moved to dissolve the injunction and dismiss the complaint. They pointed out the personal services nature of the contracts. They cited case law indicating that mandatory injunctions for such contracts cannot be entered. They pointed out the lack of subject matter jurisdiction and that the same cause of action was subsumed in the pending federal antitrust case in the Federal District Court. Several moved to quash service of process or dismiss for lack of in personam jurisdiction. All petitioners who had been served demanded jury trial. Also in that morning, the petitioners noticed an emergency interlocutory appeal and moved to stay the proceedings pending the appeal. All petitioners' motions were summarily denied by the trial court, who refused even to hear testimony concerning petitioners' defenses and contentions. The trial court did, however, acknowledge the personal service nature of the contracts.

The trial court commenced evidentiary hearings solely on the issue of whether the individual defendants had executed the booking applications. It rejected all petitioners' arguments concerning the validity of the July 3rd order and the unconstitutionality of compelling involuntary servitude and orally announced late in the evening of July 7th that the petitioners whose health would permit it would be incarcerated the following day.

Emergency interlocutory appeals.

The appellate court denied immediate relief, but expedited consideration of the interlocutory appeal, requiring the intervenor State of Florida to file its brief by July 14th.

On July 8th, the trial court held 18 of petitioners in contempt of court, fined them $7500 each (without taking testimony as to their individual ability to pay and without according them their demanded jury trial), and ordered them incarcerated upon their failure to pay the fine and comply with the contracts. It also imposed incremental fines of $2500 per man for each additional day of noncompliance with the order to perform the personal services. On July 8th, the "Flagler 18" (ages 27 to 71) were jailed.

Grant of habeas corpus.

On July 10th, the Chief Justice of the Florida Supreme Court issued a writ of habeas corpus, releasing the men pending final disposition. Respondents moved to discharge the writ. The Supreme Court granted respondents' request for an emergency hearing en banc on their motion to discharge the writ. After oral argument in the Florida Supreme Court on July 14th, that Court ordered the pending interlocutory appeal transferred from the appellate court and consolidated with the habeas corpus proceeding.

Discharge of writ of habeas corpus.

On July 21st, in a 4-1 decision, the Florida Supreme Court rejected petitioners' due process and involuntary servitude arguments, discharged the writ of habeas corpus, and affirmed the trial court's orders. Petitioners' motion

for rehearing was "denied" but the Court apparently recanted much, if not all, its decision by saying that its July 21st opinion was "not res judicata" and preserving to petitioners the theoretical future right to litigate all issues, including even damages for wrongful issuance of injunction.

Despite the language of the order denying rehearing, the order compelling specific performance of personal services by petitioners stands. Petitioners are still under compulsion to perform and to pay fines as the second 55-day West Flagler racing meet (in November) nears. Their efforts to negotiate contractual terms sufficient to stay in business have been destroyed by naked judicial power, and they are not permitted to withdraw from servitude under their remaining contracts with West Flagler.

Ongoing involuntary servitude.

After the Florida Supreme Court ruling, petitioners submitted to the 28 remaining days of involuntary servitude of the first Flagler 55-day meet rather than return to indefinite incarceration without, in most instances, the ability to obtain release by payment of fines.

FEDERAL QUESTIONS TIMELY RAISED

Petitioners raised the issues of due process of law, involuntary servitude, lack of jurisdiction over the person, lack of subject matter jurisdiction, and lack of any jurisdiction after removal and prior to remand. They raised these issues in the court of first instance, in the appellate court and before the Florida Supreme Court.

In open court, counsel for petitioners argued from motions which had been filed:

> "We have moved to quash service with respect to those who . . . have not been served. . . . We had no authority to personally appear for [those] and do not desire to do so except specifically to contest jurisdiction. [T 2/4]
>
> * * *
>
> "Further there is a lack of jurisdiction over the subject matter . . . the gravamen of the complaint is that there is an interstate conspiracy and group boycotting presenting a federal question of violation of federal antitrust laws over which this court has no subject matter jurisdiction. The Sherman Act and the Clayton Act may not be enforced in this court. . . . This case should be dismissed and the entire matter should be disposed of in the federal court . . . [in] the suit . . . West Flagler Associates, Limited, vs. Richard F. Andrews, et al., Case Number 75-1213, Civil. [T 2/21]
>
> * * *
>
> "Your Honor, I . . . object to references to the ex parte hearing that took place in this court at 3 P.M. on . . . July 3rd. Counsel is improperly referring to that now. . . . To refer to it, to comment on it and rely on any actions or facts that took place when this court had no jurisdiction under federal law is highly improper.
>
> "THE COURT: Overruled. [T 2/25]
>
> * * *

"As grounds for the motion to dissolve, the defendants wish to offer testimony . . . demonstrating that the contract involved calls for personal services. . . . Secondly, the . . . purported contracts . . . are unconscionable . . . void . . . adhesion contracts which a court of equity would not enforce by . . . mandatory injunction. . . . The court will please take notice of the defendants' objection to the presentation . . . of testimony while the court, because of . . . [the] petition . . . [for] removal, lacked jurisdiction to hear the same. . . . We cannot, under any due process or equal protection concept be forced to that Hobson's choice and . . . a subsequent order . . . pursuant to a hearing that took place . . . without the presence of these defendants . . . taints the order of this court entered . . . after . . . remand. . . . [T 2/88-89]

* * *

". . . the issuance of the temporary mandatory injunction in this case is . . . [a ruling] on the final merits prior to discovery, prior to all of the procedures . . . for parties to properly prepare and present evidence. . . . [T 2/97]

* * *

"Your Honor, I want to demonstrate the personal services nature of these contracts.

"THE COURT: Not at this hearing. That is for the final hearing.

* * *

"Your Honor, a personal services contract according to the law I cited to the court—

"THE COURT: They are, in my opinion, personal services on the face of these contracts, and in the final hearing we will determine that, not now. [T 2/161-162]

* * *

"Your Honor, one of the tests of the propriety of mandatory injunctions is whether . . . [there is] a likelihood of the success of the plaintiff at the final hearing . . . unless I can demonstrate that to the court, I am foreclosed from offering evidence on that significant test. . . .

* * *

"THE COURT: I am not going into it. [T 2/198-199]

* * *

"I could state many other cases that have been cited to the Third District Court of Appeal . . . [on our emergency appeal]. I would like to adopt for purposes of this motion those citations . . . and I will file a copy of it with the court. [T 3/7]

* * *

"I respectfully submit in light of the extreme constitutional—the number of constitutional issues involved that have been raised in this matter involving the involuntary servitude, under the circumstances, the lack of due process afforded these defendants, that the court should stay its order and afford these defendants an opportunity to challenge those orders in the appellate court before it proceeds to enforce the contempt fines or jail sentences. . . . The fines themselves . . . are excessive on their face. They are not related to the means of the defendants. They are far in

excess of many's ability to pay . . . and they cannot pay the fines and remove themselves from jail at all." [T 3/11-12]

Despite the foregoing contentions and arguments by petitioners, the trial court entered the order appended at A-98.

On July 10, 1975, the trial court reduced to writing its orally announced rulings. That order is appended at A-103. Part of that order reads as follows:

> "On July 3, 1975, this Court sat for the purpose of hearing the application for mandatory injunction of the Plaintiffs. At the convening of the Court, the Defendants through their attorneys . . . announced to the Court that they had filed a petition to remove the suit to the United States District Court. The Court announced that it would proceed with the hearing and the Defendants asked leave to remove themselves from the courtroom and request for removal was granted. The Court then considered the pleadings and the testimony submitted by the State of Florida, County of Dade and the Plaintiff, West Flagler Associates, Limited.
>
> "At 6 o'clock P.M. on July 3, 1975, the Court was served with an order . . . remanding said cause . . . whereupon the Court then entered its order of July 3, 1975, at 6:10 P.M."

The Court thereupon denied the motions to dissolve, to dismiss, to quash and to dismiss for lack of jurisdiction.

The Court further ruled "That the Defendants' demand for jury trial be and the same is hereby denied" and

> "that the temporary mandatory injunction order of July 3, 1975, is hereby approved, ratified and confirmed and re-published as of this July 7, 1975, as an order of this Court. This Order is entered nunc pro tunc, as of July 7, 1975."

In their interlocutory appeal to the appellate court and in their briefs to the Florida Supreme Court, petitioners continued to present the due process, lack of jurisdiction and Thirteenth Amendment objections.

REASONS FOR GRANTING THE WRIT

The decision and opinion of the Florida Supreme Court affirming the proceedings below repudiates three critically important portions of the United States Constitution, as well as overruling a federal statute. The decision below flies directly in the face of many decisions by this Court. It posits an almost unbridled power in a state trial court. In the name of "the public interest" the Florida Supreme Court has approved a total denial of due process of law and has created a modern form of peonage more than 100 years after the adoption of the Thirteenth Amendment.

Totally apart from the fact that 43 persons or entities have been subjected to various kinds of summary judicial tyranny, to permit such a proceeding to stand would be to invite similar abuses in an era when the preliminary injunction is repeatedly being sought by public as well as private entities.

Judicial compulsion of personal services is involuntary servitude.

Once before in Florida history, the Florida Supreme Court countenanced a violation of the Thirteenth Amendment. The case came to this Court, which reiterated the perfectly obvious constitutional prohibition. *Pollock v. Williams*, 322 U.S. 4 (1944). There, Emanuel Pollock received payment in advance for a promise to perform services. He was convicted of a misdemeanor under a Florida statute concerning fraud. The Florida Supreme Court reversed a trial court grant of writ of habeas corpus. This Court reversed, enunciating the supremacy of the United States Constitution over the "public interest":

> "... in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. Resulting depression of working conditions and living standards affect not only the laborer under the system, but every other with whom his labor comes in competition. Whatever of social value there may be, and of course it is great in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service." [at 18]

The Thirteenth Amendment is "undoubtedly self-executing without any ancillary legislation, so far as its

terms are applicable to any existing state of circumstances. By its own unaided force and effect, it abolished slavery and established universal freedom." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). It is not a mere prohibition of state laws establishing or upholding slavery but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States. *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971). See also *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 438 (1968), and *District of Columbia v. Carter*, 409 U.S. 418, 422 (1973). Although none of those cases specifically dealt with the issuance of a preliminary mandatory injunction, the rationale is so plain and so all-encompassing that the compulsory performance of personal services simply cannot stand.

The preliminary mandatory injunction was clearly the fruit of the evidence and testimony taken ex parte while the federal district court had absolute and exclusive jurisdiction of the case.

The decision below attempted to justify the trial court's jurisdiction on the ground that the trial court waited until 15 minutes after remand to enter the order, but that order itself clearly states that it is based upon the hearing which was held ex parte during a time when the case reposed in the jurisdiction of the Federal District Court. The taint of that illegally obtained evidence cannot be washed by a 15-minute waiting period.

It was just to avoid such post-removal, pre-remand actions by state courts that Congress amended Title 28 United States Code, Section 1446(e). The pre-1948 version of that statute contained this language: "The State court

shall proceed no further therein unless the case is remanded." The 1948 amendment changed that language to read that after removal "the State court shall proceed no further unless and until the case is remanded." *Mitchum v. Foster*, 407 U.S. 225, 234, n.12 (1972); *Georgia v. Rachel*, 384 U.S. 780, 797, n.27 (1966).

For the trial court to ignore its lack of jurisdiction and proceed on the basis of hearings held in open, direct and complete contravention of federal law, and to be affirmed in this action by the Florida Supreme Court, is a direct repudiation of the federal supremacy clause, the Congressional statute and the decisions of this Court.

The trial court's incarceration for claimed contempt of an order rendered without subject matter or in personam jurisdiction violates due process.

As this Court has recently recognized in *Maness v. Meyers*, 419 U.S. 449 (1975), those orders which must be obeyed until reversed by orderly and proper proceedings are those issued by courts with jurisdiction over the subject matter and person. 42 L.Ed.2d at 583.

But a state court cannot punish with contempt the violation of an order beyond that court's jurisdiction. *Re Green*, 369 U.S. 689, 692 (1962):

> "A state court is without power to hold one in contempt for violating an injunction that the state court had no power to enter by reason of federal pre-emption."

See also *Utd. G. C. & Chem. Workers v. Wisc. Empl. Rel. Board*, 340 U.S. 383 (1950) (reversing a conviction for contempt for disobedience of a state court restraining order).

It has long been the law enunciated by this Court that a court has no power to punish for contempt violation of an injunction it had no jurisdiction to issue. *Worden v. Searls*, 121 U.S. 14 (1887). See *Ex Parte Rowland*, 104 U.S. 604 (1882):

> "But if the command was in whole or in part beyond the power of the court, the writ, or so much as was in excess of jurisdiction, was void and the court had no right to punish for any contempt of its authorized requirements." [27 L.Ed. at 864]

Refusal to hear petitioners' defenses until "later" rendered the hearing meaningless.

With petitioners' very liberty as well as their property at stake, the trial court procedure, affirmed by Florida's Supreme Court, was "we'll hear your defenses later." Ex parte hearings, short notice or none, refusal to hear defenses, setting a $25,000 bond for an injunction concerning $3,000,000 of property, refusal to stay contempt proceedings even for one day for appellate review — all these things, and more,[2] were affirmed by the Florida Supreme Court. This procedure plainly fails to be that "law which hears before it condemns; which proceeds upon inquiry; and renders judgment only after trial," long mandated by this Court. *Dartmouth College v. Woodward*, 4 Wheat 518

[2]See A-26 through 48, infra.

(1816). Refusal to hear defenses is what this Court defined as "judicial usurpation and oppression" in *Powell v. Alabama*, 287 U.S. 45, 68 (1932).

All defendants, old and young, are entitled to notice of a hearing "sufficiently in advance... to permit preparation." *Re Gault*, 387 U.S. 1, 33 (1967). See also *Boddie v. Connecticut*, 401 U.S. 371, 378-380 (1971), and *Goss v. Lopez*, 419 U.S. 565, 42 L.Ed.2d 725, 737 (1975). Nor can the imagined need for haste justify the proceedings below. See *Stanley v. Illinois*, 405 U.S. 645, 656 (1972):

> "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." [footnote omitted]

This Court has recently and forcefully ruled, in a suit against the very attorney general who appeared below, that "an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). There, through Mr. Justice Stewart, this Court said that:

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not embraced the general proposition that a wrong may be done if it can be undone.'"
>
> [407 U.S. at 82]

By contrast, with petitioners' freedom in issue, on rehearing the Florida Supreme Court below said:

> "Our opinion is not res judicata to the main proceeding of this cause and is without prejudice for the petitioners and appellants to raise in the main proceeding the issues presented herein, including claims for damages for an improperly issued temporary injunction and the enforcement thereof."

Just what "main proceeding" the court thought remained is unknown. This case, filed on June 30, 1975, was over on July 29, 1975. The court's belated recognition of its error cannot be corrected by some theoretical future proceeding.

Summary

Under the Thirteenth Amendment, the state court had absolutely no authority to mandate servitude. Under Title 28, United States Code, Section 1446(e), the state

court had absolutely no authority to take the evidence and testimony upon which it based its mandatory injunction. Under the Fifth and Fourteenth Amendments to the United States Constitution, the state court had absolutely no authority summarily to issue any order not based upon notice and an opportunity to be heard and present evidence and testimony. For all or any of these reasons, the state court order of 6:10 P.M., July 3, 1975, was not merely incorrect but was void. Therefore, there was no valid decree to be violated and the trial court could not hold anyone in contempt.

CONCLUSION

For the reasons set forth herein, this petition for a writ of certiorari should be granted. Petitioners respectfully urge this Court to reverse the judgment of the Supreme Court of Florida concurrently with its issuing a writ of certiorari to that court.

Respectfully submitted,

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